

United States Senate

WASHINGTON, DC 20510

August 9, 2010

The Honorable Jo-Ellen Darcy
Office of the Assistant Secretary (Civil Works)
Department of the Army
108 Army Pentagon
Washington, DC 20310-0108

Lt. General Robert L. Van Antwerp, Jr.
Chief of Engineers
Headquarters
U.S. Army Corps of Engineers
441 G Street, N.W.
Washington, DC 20314-1000

Re: Apalachicola-Chattahoochee-Flint River Basin

Dear Secretary Darcy and General Van Antwerp,

We are writing in response to the letter sent to you by Senators Chambliss and Isakson dated July 27, 2010. In that letter, the Georgia senators request that the Corps of Engineers (Corps) expand the scope of the Environmental Impact Statement being prepared in connection with the update of the water control manuals for the Apalachicola-Chattahoochee-Flint (ACF) River Basin. Specifically, they ask the Corps to consider the provision of water supply from Lake Lanier as an alternative. That request, however, cannot be reconciled with the decision of the United States District Court for the Middle District of Florida dated July 17, 2009, or with Secretary Darcy's letter to us dated September 11, 2009.

In the July 17, 2009 order, Judge Magnuson ruled that water supply was not an authorized purpose of Lake Lanier and that the Corps had failed to comply with the Water Supply Act of 1958 in reallocating storage at Lake Lanier to water supply without congressional approval.

That ruling caused the Corps to revise the scoping report that it had prepared in connection with the update of the water control plans for the ACF River Basin. In a letter dated September 11, 2009, Secretary Darcy committed that "[t]he Army will not use the process for updating the water control plans and manuals to propose or study any potential reallocation of water inconsistent with the court's ruling." If the Corps were to take the action requested by the Georgia senators, it would directly contradict the commitment that Secretary Darcy made to us.

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Secretary Darcy's commitment comported with common sense – unless and until Congress authorizes water supply as a purpose at Lake Lanier, it would be a waste of taxpayer resources for the Corps to consider a reallocation that would be illegal. Moreover, if the Corps were to base the update of the water control plans for the ACF River Basin on a congressionally-approved authorization that never materializes, the region could be left in limbo again – all interested parties need updated manuals, and those manuals must be based on the law as it exists, not as one State wishes it were.

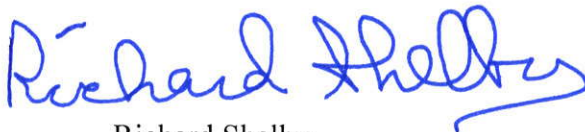
In their letter, our colleagues from Georgia focus on a few non-binding sentences in Judge Magnuson's order dated July 21, 2010. It is clear that the question of the scope of the update of the ACF manuals was not before Judge Magnuson. In fact, no court can acquire jurisdiction over challenges to the Corps' update of the manuals until that process is concluded. The Administrative Procedure Act allows challenges only to final agency actions. Judge Magnuson's commentary concerning the ongoing process was plainly premature.

The unspoken premise of the letter from the Georgia senators is that the Corps can somehow develop a solution to the tri-state water controversy. We strongly disagree with that notion. It is the job of the Governors of the three States to negotiate a compromise, and that process is ongoing. Any effort by the Corps at this point to inject itself into the controversy with a proposed resolution will be counterproductive. A solution will require concessions by each State, and it is not the job of the Corps to decide what those concessions will be.

We request that you schedule a meeting with us at your earliest convenience to discuss these matters. You should contact Laura Friedel in Senator Shelby's office at 202-224-5744 to arrange a time.

Thank you for your assistance.

Sincerely,



Richard Shelby



Bill Nelson



Jeff Sessions



George LeMieux

cc: Senator Saxby Chambliss
Senator Johnny Isakson